
OPINION OF THE PUBLIC ACCESS COUNSELOR

DUANE S. WALKER,
Complainant,

v.

PURDUE UNIVERSITY,
Respondent.

Formal Complaint No.
19-FC-30

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Purdue University violated the Access to Public Records Act.¹ Legal Services Coordinator Kaitlyn Heide responded on behalf of the university. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 26, 2019.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute about public records denied in accordance with an order for protection issued against the requestor several months after filing of the request.

On November 7, 2018, Duane Walker (“Complainant”) submitted a public records request to Purdue University, seeking the following:

...all voice and data communications traffic in their native format, if readily available, that were transmitted or received through Purdue University Information Technology resources of any type, including but not limited to, voice-mails, text messages, instant messages, and emails sent or received via wireless or wired network access using any type of device for the six lanes of communication defined below as a - f:

(a) sent to Victoria Lynn Walker (a.k.a. Lowell) from John Grawcock from 12/01/2017 to 05/31/2018.

(b) sent to Victoria Lynn Walker (a.k.a. Lowell) from John Grawcock from 06/01/2017 to 11/30/2017.

(c) sent to Victoria Lynn Walker (a.k.a. Lowell) from John Grawcock from 12/01/2016 to 05/31/2017.

(d) sent from Victoria Lynn Walker (a.k.a. Lowell) to John Grawcock from 12/01/2017 to 05/31/2018.

(e) sent from Victoria Lynn Walker (a.k.a. Lowell) to John Grawcock from 06/01/2017 to 11/30/2017.

(f) sent from Victoria Lynn Walker (a.k.a. Lowell) to John Grawcock from 12/01/2016 to 05/31/2017.

Purdue timely acknowledged the request the next morning.

Walker requested a status update on January 17, 2019, and Purdue provided an update five days later. Walker requested another update on February 14 and 20.

Notably, Dr. Lowell petitioned Tippecanoe Superior Court 5 for an order of protection on February 19, 2019. On February 20, 2019, Purdue informed Walker that it would be another month before it could fulfill his request, but the university had compiled the records.

On March 1, 2019, Tippecanoe Superior Court 5 issued an *ex parte* order for protection against Walker in accordance with Indiana Code section 34-26-5-9(b), which among other things, ordered Walker “to stay away from the place of employment” of V.W., and prohibited Walker from “harassing, annoying, telephoning, contacting, or directly or indirectly communicating with” V.W.

On March 6, 2019, Purdue denied Walker’s request. The university noted its knowledge of the order for protection against Walker, and concluded that his attempts to access the communications and records of the university’s employee violate the order.

Twenty days later, Walker filed a formal complaint with this office. Walker asserts that Purdue’s denial of his request violates the Access to Public Records Act.

First, Walker asserts that Purdue failed to state the statutory exception or exemption authorizing the university to withhold all or part of the records he requested as well as the name and title of the person responsible for the denial.

Second, Walker contends Purdue did not provide the records in a reasonable time while noting that the order for protection did not exist at the time he made his request in November.

Third, Walker contends Purdue did not carry its burden for withholding the records under APRA.

Purdue denies that it violated APRA. The university contends that Walker’s pervasive attempts to access the employee’s email communication and other records constitutes

indirect contact in violation of the *ex parte* order for protection; and thus, authorizes Purdue to withhold the records.

ANALYSIS

At issue in this case is whether an *ex parte* order for protection authorizes a public agency to deny a pending request for public records under the Access to Public Records Act if the protected person is an agency employee and the respondent or defendant is the requestor.

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.* There is no dispute that Purdue University is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Unless otherwise provided by statute, any person may inspect and copy the Purdue’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, the Act contains both mandatory² and discretionary³ exceptions to the general rule of disclosure.

² Ind. Code § 5-14-3-4(a).

³ Ind. Code § 5-14-3-4(b).

2. Walker's Complaint

The crux of Walker's complaint against Purdue is that the university cannot rely on a subsequently issued *ex parte* order for protection as the basis for denying his request for public records. He also contends that Purdue did not state the statutory authority or the person responsible for withholding the records in the denial. Walker argues that Purdue did not carry its burden for nondisclosure under APRA, and he also challenges the timeliness of the university's response.

Purdue argues Walker's request constitutes a violation of the order for protection; and thus, authorizes the university's denial under APRA.

2.1 Request for Records and Order for Protection

Purdue asserts that Walker's pervasive attempts to access the email, communication, and other records of the employee who petitioned for the order for protection against him constitutes indirect contact in violation of the order; and thus, authorizes the university to deny Walker's pending request for records.

As set forth above, APRA has both mandatory and discretionary exceptions to disclosure.

Whether Walker's requests for email records of the Purdue employee he is enjoined from contacting constitutes a violation of the order for protection is not a determination made by this office or Purdue. It is a question better suited for the court. Purdue is not responsible for enforcing the protection order or deciding whether Walker is in compliance.

Conversely, this office can provide interpretive guidance on the issue of whether the order for protection authorizes Purdue to deny Walker's pending request under APRA. This office cannot, without more, conclude that it does.

First, there is no exception to disclosure under APRA that expressly authorizes an agency to withhold otherwise disclosable public records solely based on the existence of an *ex parte* order for protection against the requestor by an agency employee. It does, however, specifically say that "any person may inspect and copy the public records of any public agency." Ind. Code § 5-14-3-3(a). A public record is presumptively disclosable under APRA. The exceptions to the rule are based on the content or the category of the record rather than the person requesting it.

Second, our courts have not addressed this specific issue; and thus, there is no appellate level guidance available as legal authority to bolster Purdue's argument.

Third, despite the lack of an express statutory exception or relevant case law, the *ex parte* order for protection itself does not expressly prohibit Walker from making requests for public records to Purdue in accordance with APRA. Even if it did, Walker made the underlying request nearly four months before the court issued the order for protection, so it is unlikely to apply retroactively.

In other words, there is nothing specifically in APRA, Indiana case law, or in the order for protection itself that supports the denial here.

Granted, the court ordered Walker to "stay away from the petitioner's place of employment." That phrase is vague.

Even so, making a determination of whether a past, pending, or future request for public records constitutes a violation of the order is an issue extraneous to Purdue's duty under APRA. Indeed, that determination is solely under the jurisdiction of Tippecanoe Superior Court 5.

If Walker's continued public records requests constitute a violation of the protective order, there are actions available to the petitioner to enforce the protective order in addition to any criminal proceedings that may result. *S.W. ex rel. Wesolowski v. Kurtic*, 950 N.E.2d 19 (Ind. Ct. App. 2011).

In sum, this office recommends Purdue address and dispose of Walker's November 8, 2018, request like it would any other request.

At the same time, Walker would do well to remember that "a violation of an order for protection is a criminal offense of invasion of privacy." *S.B. v. Seymour Community Schools*, 97 N.E.3d 288, 294 (Ind. Ct. App. 2018); *See also* Ind. Code § 35-46-1-15.1(a)(1).

Again, this office offers no opinion about whether Walker's past, pending, or future request for records violates the order for protection against him, but it is conceivable that a court could reach that conclusion under the right circumstances.

Regardless, a public agency's compliance with APRA is mutually exclusive from the enforcement of a civil order for protection under the Indiana Civil Protection Order Act.

Even though this office does not believe APRA authorizes Purdue to deny a pending request for public records based

solely on the existence of a subsequently issued *ex parte* order for protection, there is no reason to conclude that Purdue is prohibited or even discouraged from informing its employee about a spouse or former spouse's requests for the employee's emails or other records connected to the employee. This is especially true when the employee in question has an order of protection in place against the requestor.

This approach keeps the university in compliance with APRA and allows the protected person to take action to enforce the order through contempt proceedings in addition to any criminal proceedings, i.e., invasion of privacy, which may be necessary.

Under APRA, exceptions to disclosure are almost universally authorized or required based on the content of the record, not the requestor. In other words, the record itself is what determines whether it is exempt.

All in all, this office concludes that APRA does not authorize a public agency to withhold public records from disclosure based solely on the existence of an *ex parte* order for protection obtained by an agency employee against the requestor.

2.2 Reasonable Time

Under APRA, after an agency receives a request, it must "within a reasonable time" either provide the requested copies to the requestor or allow the person to make copies of the records. Ind. Code § 5-14-3-3(b)(1), -(2).

Here, Walker and Purdue agree that he filed his request on November 7, 2018. Purdue says the public records office submitted a request to Information Technology at Purdue

(“ITaP”) to conduct a preliminary search for the records requested by Walker. The next day, ITaP provided the public records office with a personal storage table (“.pst”) file with the records.

Over the next few months, Walker requested status updates and Purdue updated him on where he was in the line of requests the university had in front of it. On March 1, 2019, the same day the court issued the order for protection against Walker, Purdue denied Walker’s request based on the court’s order.

APRA does not define “reasonable time.” Still, for a public agency the size of Purdue, given the relatively narrow scope of Walker’s request, it simply should not take the better part of four months to review the records and fulfill the request. Purdue concedes that ITaP compiled the responsive records by the day after the request.

That’s not to say the university needed to drop everything and attend to Walker’s request, but there should definitely be a solution that meets closer to the middle.

Although it is unclear how many email messages the search produced, given scope of the request Purdue likely exceeded “reasonable time” for providing any disclosable records associated with a fairly rote request.

2.3 Statement of the Specific Exemption

Under APRA, a public agency may deny a written request for records if: (1) the denial is in writing; and (2) the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record, and

the name and title or position of the person responsible for the denial.

Here, Purdue denied Walker's request in writing. The denial references the order for protection against Walker as the reason for the denial, and includes the name of the person responsible for the denial. The denial does not include the employee's job title, but previous exchanges did include that information. The omission of a job title from a denial—if anything—could amount to a technical deviation from the letter of the law.

Even so, this office concludes that the format of Purdue's denial substantially complied with APRA because it was in writing, it included the name of the person responsible for the denial, and provided the agency's statement of the specific exemption (e.g., the order for protection) authorizing it to withhold the records.

CONCLUSION

Based on the foregoing, it is the recommendation of this office that Purdue University release the requested public records that are not otherwise exempt from disclosure under the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor